

continue the trial until a date convenient to the Court and the parties in January 2021. CONSOL also respectfully asks that the Court revise the scheduling order for any remaining submissions as explained below.

1. This Court issued its summary judgment order on October 22, 2020, entering judgment for CONSOL on all but two counts. (Dkt. 262.) At the pretrial hearing on October 23, 2020, despite the narrowed scope of the issues for trial, Plaintiffs stated their intention to present a number of additional witnesses whom they generally described as providing unexplained “corroboration” to the named Plaintiffs’ claims.

2. On October 30, 2020, following the pretrial hearing, Plaintiffs submitted an updated witness list (Dkt. 266), which continued to include many of the witnesses Plaintiffs had previously disclosed prior to his Court’s summary judgment ruling. This includes approximately fourteen apparent lay witnesses from whom Plaintiffs intend to offer the aforementioned “corroborative” testimony.

3. CONSOL has been collecting and reviewing information related to these lay witnesses in light of the remaining issues at trial, including the identification of additional rebuttal witnesses. CONSOL is also reviewing this Court’s 70-page ruling to identify necessary additional facts to be included in CONSOL’s Finding of Fact and Conclusions of Law, and evaluating the need to identify additional facts and conclusions to address the significant number of witnesses Plaintiffs apparently intend to offer at trial.

4. Given the breadth of these foregoing tasks, CONSOL respectfully submits that it will require additional time to complete these tasks, amend the parties’ pretrial order, and prepare expanded findings of fact and conclusions law on the remaining issues.

5. Defendants’ preparation has also been impacted by the ongoing COVID pandemic. Both Chicago and Pittsburgh, where CONSOL’s attorneys and principal affirmative witnesses are

located, have experienced a significant uptick in COVID diagnoses. As a result, both Chicago and Pittsburgh have recently tightened restrictions.¹

6. Illinois, those who enter the state from West Virginia are directed to “stay home if possible and monitor [their] health for 14 days.”² These restrictions were added in late October, and add to the challenge of safely and effectively presenting in-person witness testimony for trial, as well as the ability of CONSOL counsel to attend to other matters after the conclusion of a trial in this case. Such restrictions may also impact other witnesses who may have to travel from other jurisdictions to West Virginia.

7. Pennsylvania, where CONSOL’s principal witnesses are located, similarly recommends anyone traveling to areas “where there are high amounts of COVID-19 cases” stay at home for 14 days upon return.³

8. Since the pretrial hearing, the ongoing COVID pandemic has also worsened in West Virginia.⁴ Again, this may further complicate the possible risk for individuals who may have to travel to and from Charleston for purposes of the trial, which may impact both their personal and professional obligations.

9. As a result of these challenges, CONSOL respectfully moves that this Court continue the trial until a date convenient to the Court and the parties in January 2021. CONSOL further moves that the parties be allowed to submit a revised scheduling order to address submission of a revised pretrial order and findings of facts and conclusions of law.

10. CONSOL further respectfully submits that any delay will not prejudice any party in this case. In fact, Plaintiffs have already caused the trial to be continued by filing an

¹ <https://www.chicago.gov/city/en/sites/covid-19/home/emergency-travel-order.html>;
<https://pittsburghpa.gov/mayor/covid-updates>.

² <https://www.dph.illinois.gov/covid19/travel-safety-guidance>.

³ <https://www.health.pa.gov/topics/disease/coronavirus/Pages/Travelers.aspx>

⁴ <https://dhhr.wv.gov/News/2020/Pages/COVID-19-Daily-Update-11-4-2020.aspx>. *See also* <https://dhhr.wv.gov/COVID-19/Pages/default.aspx>.

interlocutory appeal two weeks before trial was scheduled to begin in early August. (Dkts. 249–51.) A short, additional continuance will not materially prejudice any party.

For these reasons, Defendants respectfully request that the Court continue trial in this case until January 2021, and allow the parties to submit a revised scheduling order as described above.

Dated: November 5, 2020

Respectfully submitted,

CONSOL ENERGY INC.; CONSOLIDATION
COAL COMPANY; FOLA COAL COMPANY,
LLC; CONSOL OF KENTUCKY, INC.;
CONSOL PENNSYLVANIA COAL CO., LLC;
and KURT SALVATORI

By: /s/ Michael D. Mullins

One of Their Attorneys

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**IN THE UNITED STATES DISTRICT COURT FOR
THE SOUTHERN DISTRICT OF WEST VIRGINIA
CHARLESTON DIVISION**

BENNY FITZWATER, CLARENCE BRIGHT,
and TERRY PRATER, on behalf of themselves
and others similarly situated,

Plaintiffs,

v.

CONSOL ENERGY, INC., CONSOLIDATION
COAL CO., FOLA COAL CO., LLC, CONSOL
OF KENTUCKY, INC. and KURT SALVATORI,

Defendants.

EMMETT CASEY, JR., CONNIE Z. GILBERT,
ALLAN H. JACK SR., and ROBERT H. LONG,
on behalf of themselves and others similarly
situated,

Plaintiffs,

v.

CONSOL ENERGY, INC., CONSOLIDATION
COAL CO., CONSOL PENNSYLVANIA COAL
CO., LLC, and KURT SALVATORI,

Defendants.

No. 2:16-cv-9849

Hon. John T. Copenhaver

No. 1:17-cv-3861

Hon. John T. Copenhaver

CERTIFICATE OF SERVICE

The undersigned, one of the attorneys for Defendants, hereby certifies that on November 5, 2020, he caused a true and correct copy of the foregoing **Motion to Continue Trial** to be electronically filed with the Clerk of the Court using the CM/ECF system, which will then send a Notice of Electronic Filing to counsel of record as follows:

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